No. 80-598

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

DAVID W. JOLY,
PETITIONER

V.

LAWRENCE P. CREEDON,
RESPONDENT

RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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STATUTES.

United States Consititution, Fourteenth Amendment
28 U.S.C. §1343
42 U.S.C. §1983

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Due Process Clause of the Fourteenth Amendment required that procedural due process be provided to David W. Joly before two letters of reprimand were placed in his personnel file.

II. If David W. Joly was entitled to procedural due process before two letters of reprimand were placed in his personnel file, whether the procedures outlined in the collective bargaining agreement were constitutionally adequate under the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

David W. Joly a teacher and assistant principal in the Quincy Public Schools, brought this action pursuant to 42 U.S.C. §1983, 28 U.S.C. §1343 and the Fourteenth Amendment to the United States Constitution. (Complaint 2-3). The Defendant in the action is Lawrence P. Creedon, Superintendent of the Quincy Public Schools. (Complaint 3).

Appellant, David W. Joly, has been a public school teacher for twenty-three years; since 1967, he has served in another capacity as assistant principal in the Quincy Public Schools. (Complaint 2-3). On May 7, 1979, Mr. Joly received a letter from Jean Ann MacLean, Principal of the Myles Standish School. (Complaint, Ex.A). In that letter, Ms. MacLean reviewed an incident which occurred in Mr. Joly's classroom, namely the voting by students on those children who do not get along well with others; one child termed the activity "choosing Public Enemy Number One." (Complaint, Ex. A). As a result of the voting, two children were given the dubious honor of being the children who did not get along well with others. (Complaint, Ex. A). The other children in the class then analyzed why these two children did not get along with others. (Complaint, Ex. A). A parent of one of the elected children filed a formal complaint. (Complaint, Ex. A). In her letter, Ms. MacLean stated that Mr. Joly had subjected children to embarassment, had violated good pedagogical theory and had acted in opposition to the Quincy Public Schools' goal of "humane treatment of little folk." Mr. Wilfred Nolan, Director of Elementary Education, sent a letter to Mr. Joly on May 8, 1979, indicating that he agreed with the actions taken by Ms. MacLean. (Complaint, Ex. B). In his letter, Mr. Nolan indicated to Mr. Joly that if he disagreed with the substance of Ms. MacLean's letter, he could respond in writing and have his rebuttal attached to Ms. MacLean's document for insertion in his personnel folder. (Complaint, Ex. B). At some point, these two letters were placed in the personnel file of Mr. Joly.

Appellant and other teachers in the Quincy Public Schools, are represented by the Quincy Education

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Association. (Complaint 4). A contract between the Quincy Education Association and the Quincy School Committee has existed since 1969. (Complaint 5). The most recent agreement had a duration from 1977-1979. The collective bargaining agreement contains a grievance and arbitration procedure. (Complaint, Ex. E, 4-6). A grievance is defined as a violation, misinterpretation or misapplication of any of the express provisions of the agreement. (Complaint, Ex. E, 4). One of the express provisions in the contract deals with the insertion of material in a teacher's personnel file, namely Article XXII (Complaint, Ex. E, 21-23). The contract provides that a teacher must be given a copy of the material or letter and the opportunity to write a rebuttal to the material or letter, whereupon both documents would be placed in the teacher's personnel file as part of the permanent record. (Complaint, Ex. E, 22).

Mr. Joly filed an undated memorandum with Mr. Nolan, the subject of which was the two letters of May 7 and 8, 1979. (Complaint, Ex. C). In that memorandum, Mr. Joly claimed that the program used in the classroom on May 3, 1979 was sound and that his constitutional rights had been violated. (Complaint, Ex. C). Mr. Joly did not file a grievance, but rather filed the instant action.

Joly claimed that the insertion of letters of reprimand in his personnel file without a trial-type hearing prior to including those letters in his file, violated the Due Process Clause of the Fourteenth Amendment. (Complaint 8). Respondent filed a Motion to Dismiss in answer to Joly's complaint. Respondent asserted in part, that the complaint failed to state a claim upon which relief could be granted in that Joly had no right to procedural due process prior to the inclusion of the two letters in his file; even if he were entitled to procedural due process, the procedures contained in the collective bargaining agreement were constitutionally adequate. Petitioner filed a Motion for Summary Judgement which was consolidated for hearing with Defendant's Motion to Dismiss. The hearing was held on February 19, 1980 before Garrity, J. Judge Garrity granted respondent's Motion to Dismiss for failure to state a claim upon which

relief can be granted, pursuant to Fed. R. Civ. Proc. 12(b)(6).

On July 16, 1980, the United States Court of Appeals for the First Circuit affirmed the decision of the District Court.

ARGUMENT

I. THE COURT SHOULD NOT GRANT CERTIORARI, SINCE THE DECISION OF THE COURT OF APPEALS COMPORTS WITH PRECEDENT

Review by this Court on writ of certiorari is not a matter of right. Rather, such review lies in the sound discretion of the Court. Generally, the Petitioner must demonstrate that the questions on review present important issues for decision by the Court. Petitioner has failed to show the requisite novelty or importance which must be demonstrated before the Court grants certiorari.

In this case, the opinion and decision of the First Circuit Court of Appeals comports with decisions rendered by this Court and the other Courts of Appeals. There is no decision by another Court of Appeals which conflicts with the lower court's decision. The question created for review by the Court of Appeals for the First Circuit had been decided in a number of by decisions rendered by this Court in the last twelve years. Thus, granting certiorari would be a waste of judicial resources.

Although, at the district court level Petitioner raised the argument that he had been denied a constitutionally protected property interest, he waived this issue at oral argument before the court of appeals. Thus, the sole issue remaining is whether the placement of two letters of reprimand in the personnel file of Petitioner implicated a constitutionally protected liberty interest such that Petitioner was entitled to procedural due process. It is clear from existing precedents, analyzed below that the answer to that question is a resounding "No", and thus, the discretion of this Court would be utilized best by denying the petition for a writ of certiorari.

A. The Complaint Was Properly Dismissed Since Petitioner Was Not Denied A Constitutionally Protected Liberty Interest.

It is clear that for a litigant to establish a right to procedural due process, the individual must have been deprived of a constitutionally protected liberty or property interest through state action. This Court has rejected the notion "that any grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause." *Meachum* v. *Fano*, 427 U.S. 215, 224 (1976). Preliminarily then, it is necessary to consider the type of interests, the deprivation of which invokes the Due Process Clause.

At one time, analysis of the right to due process turned on the characterization of the interest at stake as being a right or a privilege.

> "Where it has been possible to characterize the private interest . . .as a mere privilege subject to the Executive's plenary power, it has traditionally been held that notice and hearing are not constitutionally required."
>
> *Cafeteria Workers* v. *McElroy*, 367 U.S. 886, 895 (1961), citing *Oceanic Navigation Co.*, v. *Stranahan*, 214 U.S. 320, 340-343; *Knauff* v. *Shaughnessy*, 338 U. S. 537: *Jay* v. *Boyd*, 351 U.S. 345, 354-358; c.f. *Buttfield* v. *Stranahan*, 192 U.S. 470, 497.

The Court eventually rejected the wooden distinction between rights and privileges. In *Board of Regents* v. *Roth*, 408 U.S. 564, 569 (1972), this Court indicated that the requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. Although the Court indicated that these interests involve a panopoly of property and liberty, it nonetheless stated that boundaries on those interests protected by the Due Process Clause had

to be set. In the years following *Roth*, the Court set about to establish those boundaries. In *Paul v. Davis*, 424 U.S. 693 (1976), the *Bishop v. Wood*, 426 U.S. 341 (1976), this Court made clear that the boundaries on those property and liberty interests protected by the Constitution are established by state law. If an individual is entitled to a property or liberty interest under state law, then the Due Process Clause comes into play. Thus, in the case at bar, Petitioner had to allege a state-created liberty interest, an "entitlement," which was infringed by his two superiors' acts of placing letters in his personnel file. The liberty interest which the Petitioner has placed in issue, related to the liberty interest in one's reputation, namely, freedom from being stigmatized. Recent cases establish that liberty interests, like property interests, must be viewed with reference to state law. *Meachum v. Fano*, 427 U.S. 215 (1976) (prisoners' transfer); *Paul v. Davis*, 424 U.S. 693 (1976) (reputation); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (parole).

Further, in *Paul v. Davis*, 424 U.S. 693 (1976), this Court decided that defamation, standing alone, did not state a claim for relief under 42 U.S.C. §1983 and the Fourteenth Amendment. In that case, two chiefs of police distributed to merchants a leaflet in which the plaintiff was listed as an active shoplifter, even though the plaintiff had never been convicted of a crime. In dealing with the issue of whether reputation alone is either liberty or property sufficient to invoke the Due Process Clause, the Court analyzed its long history of cases and concluded that the deprivation of reputation or one's good name, without state denial of some other interest, is not sufficient.

The Court, in *Paul v. Davis*, relied upon *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972) where it stated:

> "The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and association in his community. It did not base the nonrenewal of his contract on a charge, for example that he had been guilty of dishonesty, or immorality. . .

> Similarly, there is no suggestion that the State, in declining to re-employ the respondent, imposed on him a stigma, or other disability that foreclosed his freedom to take advantage of other employment opportunities. . ."

Both *Paul v. Davis* and *Roth* indicate that for an individual to allege sufficiently a constitutional violation, there must be stigma plus the denial of a protected benefit. Stigma, itself, contains two components: publication and a charge, like dishonesty or immorality, that would seriously damage one's standing in the community. In the case at bar, a reading of the complaint indicates that there was no publication, no stigmatizing material and no denial of a benefit; the Petitioner cannot meet the "Stigma plus" test. Further, the hearing required in the case of stigmatization by the state only provides the individual with the opportunity to clear his name. Thus, the plaintiff must allege the falsity of the charges or his complaint is defective. *Codd v. Velger*, 429 U.S. 624 (1977). Since Mr. Joly has never denied the events of May 3, but rather only disagrees with the educational judgments of his superiors about those events, then his claim has this additional defect.

Mr. Joly did not allege in the complaint that the letters of reprimand were ever publicized; he only alleged that the letters were placed in his personnel file. The collective bargaining agreement refutes any implication that publication of the letters took place. Article XXII, Member Evaluation states that:

> "No persons, other than the member's current principal, the member, members of the Committee, the Assistant Superintendent in charge of instructional personnel, the Superintendent or his clerical designee, the Assistant Superintendent of Curriculum or his clerical designee, or the members of the Association's personnel screening committee, shall have access to a member's personnel file."

Thus, a very limited group of persons has access to an individual's personnel file and in the case at bar, there is no allegation that even this group of persons ever saw the letters in Mr. Joly's personnel file. No publication of the letters occurred. The Court Of Appeals specifically noted that no publication of the letter had taken place.

In a number of cases, courts have rejected a plaintiff's claim of deprivation of a liberty interest because of the failure to allege publication. *Bishop v. Wood,* 426 U.S. 341 (1976); *Webster v. Redmond,* 599 F. 2d 793 (7th Cir. 1979); *Longarzo v. Anker,* 578 F. 2d 469 (2nd Cir. 1978). In *Colaizzi v. Walker*, 542F. 2d 969 (7th Cir. 1976), cert. denied, 430 U.S. 960 (1977), there was no question of publication, since the Governor, in dismissing the plaintiff, had issued a press release citing the reasons for the dismissal. The Court of Appeals had to remand the case in *Austin v. Bd. of Educ. of Georgetown,* 562 F. 2d 446 (7th Cir. 1977); the plaintiff alleged publication, which was denied by the defendant. The court indicated that public knowledge of stigmatizing charges leading to the non-renewal of a teacher's contract was not sufficient; the Board of Education had to be the party responsible for publication in order to find stigmatization. In the case at bar, there is not dispute about publication; neither party asserts that the letters were publicized. Thus, Mr. Joly cannot make out a claim of deprivation of a liberty interest.

Further, the letters themselves were not stigmatizing. The two letters indicated that the principal and Director of Elementary Education did not approve of the classroom activity in which Mr. Joly had permitted his students to engage. These letters show that the principal and Director of Elementary Education had a difference of Educational opinion with Mr. Joly. The district court adopted this view and further found that letters displaying differing educational opinions are not stigmatizing.

In *Roth,* the Court indicated that stigmatizing material would be exemplified by a charge of dishonesty or immorality. 408 U.S. at 573. *In Willens v. University of Massachusetts,* 570 F. 2d 403 (1st Cir. 1978), the Court of

Appeals for the First Circuit agreed with the district court's finding that the reasons for denying plaintiff tenure in that case were not stigmatizing; Judge Skinner found that the reasons did not involve moral turpitude or dishonesty. In both *Austin v. Bd. of Educ.*, 562 F. 2d 446 (7th Cir. 1977) and *Colaizzi v. Walker*, 542 F. 2d 969 (7th Cir. 1976), the charges were found to be stigmatizing; the charges in these two cases involved immorality and criminal activity respectively. There was no question that in the latter two cases, an individual's standing in the community would be affected by publication of the charges.

In the case at hand, the letters to Mr. Joly did not charge him with criminal activity, immorality, dishonesty or any act resembling these charges. The letters to Mr. Joly challenged his pedagogical technique and philosophy. An educational judgment concerning Mr. Joly's performance was made, just as in Mr. Roth's case, and the teacher was found to be lacking or remiss in some respect. Thus, the material included in Mr. Joly's personnel file does not fall within the category of stigmatizing material.

Finally, even if this Court should find that the letters were published and of a stigmatizing nature, Mr. Joly has not alleged a constitutionally protected liberty interest. In order for the publication of stigmatizing material to rise to the level of deprivation of a protected liberty interest, there must be a deprivation of some other interest, granted by the state. *Paul v. Davis*, 424 U.S. 693 (1976).

The courts have faithfully followed the Supreme Court's analysis in *Paul v. Davis*. In *Lyons v. Sullivan*, 602 F. 2d 7 (1st Cir. 1979), cert. denied,_____U.S._____, 100 S.Ct. 159 (1979), this court found that the teacher did not allege a liberty interest sufficiently because the defamation did not occur in the course of his termination from employment. A tenured teacher was reprimanded, transferred to another school, and a letter of reprimand placed in her personnel file in *Sullivan v. Brown*, 544 F. 2d 279 (6th Cir. 1976). The court of appeals held that the teacher had not alleged sufficiently a liberty interest because

she had not been terminated from her employment. The transfer was not a sufficient deprivation of a property interest, combined with the stigmatizing material, to show a deprivation of a liberty interest.

Likewise, in *Swilley v. Alexander*, 448 F.Supp. 702 (S.D. Ala. 1978), a teacher was reprimanded for leaking to the press certain information and a letter of reprimand was placed in his personnel file. The court, on authority of *Ortwein v. Macky*, 511 F. 2d 696 (5th Cir. 1975) and *Sims v. Fox*, 505 F.2d 857 (5th Cir. 1974), found that the letter of reprimand did not infringe on the teacher's constitutional rights. The court implied that the basis of its decision was twofold; the "stigma" was not serious enough, nor did it foreclose employment opportunities.

There have been a number of cases where the public employee has been given an unsatisfactory rating for his performance. In those cases, the courts have uniformly held that the unsatisfactory rating, absent a deprivation of a protected property interest, was not a liberty interest sufficient to invoke the Due Process Clause. *Bishop v. Wood*, 426 U.S. 341 (1976); *Longarzo v. Anker*, 578 F.2d 469 (2nd Cir.1978); *Moore v. Otero*, 557 F.2d 435 (5th Cir. 1977); *Teachers United For Fair Treatment v. Anker*, 445 S.Supp. 469 (E.D.N.Y. 1977).

In the Petition for Writ for Certiorari, Petitioner, apparently in an attempt to establish the requisite liberty interest, has referred to certain events which are not part of the record and not properly before this Court. The complaint was filed in district court in August, 1979. Yet, in his petition, the Petitioner refers to a newspaper story printed on February 20, 1980, a school committee meeting attended by Petitioner and parents who had read the story and a meeting between Petitioner and his union on March 3, 1980. The events not only occurred after the complaint as filed, but also after a decision was rendered by the district court. Even if these events could be considered by this Court, they do not enhance Petitioner's case. These events do not establish that Petitioner has been deprived of any benefit by Respondent or by the Quincy School Committee.

Finally, Petitioner estimates for the first time at this

level that, in addition to the stigma credited by these letters, the Petitioner's right to interstate travel has been infringed. The short answer to such an argument is that the record fails to disclose any facts implicating the rights to interstate travel.

The cases cited above are clearly applicable to the instant case. Since Mr. Joly has continued in his employment as both teacher and assistant principal the presence of stigmatizing material in his personnel file, even if it had been published, does not rise to the level of a deprivation of a liberty interest protected by the Due Process Clause. Therefore, dismissal of the Petitioner's complaint was proper and correctly affirmed by the court of appeals.

B. The Complaint Was Properly Dismissed Because The Petitioner Was Accorded All The Process To Which He Was Entitled.

Even if the Petitioner had been deprived of an entitlement sufficient to trigger the requirements of the Due Process Clause, the complaint was still properly dismissed. Once the court has determined that a litigant is entitled to due process, the question still remains what process is due. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Constitutionally sufficient procedures were available to Mr. Joly. The opportunity for a teacher to inspect and rebut any material to be placed in his file prior to its inclusion, and the availability of a grievance and arbitration procedure, satisfy the requirements of due process.

When a letter is written about any Quincy Teacher, a set procedure is followed: "The teacher (is) given a copy of (the) letter to sign, and to write a rebuttal, whereupon both letters would be placed in the teacher's personnel file. . .". This procedure satisfies the core concerns of due process, namely, notice and the opportunity to be heard, although, as shown in Section A, the school system was not constitutionally required to follow this or any other procedure. The fact that a teacher is given a copy of any letter to be placed in his file for his signature, before the letter is placed in his file, satisfies the requirement of notice of potentially adverse governmental action. The opportunity for the teacher to rebut the contents of the letter, in writing, insures that a teacher will have an opportunity to present his view of the situation in the light he deems most favorable. Further, it is a permanent record to counteract the permanent record of reprimand. Thus, the core concerns of due process are satisfied by adherence to the procedures followed in the Quincy Public School System.

Further, as both the complaint and the collective bargaining agreement indicate, the Grievance and Arbitration Procedure, outlined in Article IV, provides for a post-determination hearing process. Under the Grievance and Arbitration Procedure, if utilized, Mr. Joly would have the right to challenge the factual basis and educational

conclusions concerning the events of May 3. Assumedly, the reason for Mr. Joly's desire for a hearing before Superintendent Creedon is to challenge his superiors' conclusions that the classroom activity was pedagogically improper. This is precisely the same function served by the Grievance and Arbitration Procedure. That procedure is even fairer than the hearing requested by Mr. Joly because he will have the advantage of "three bites of the apple", a hearing before the Superintendent, the full School Committee and an impartial hearing officer, the arbitrator.

That the dictates of due process can be satisfied by procedures contained in a collective bargaining agreement, is shown by the recent case of *Needleman v. Bohlen*, 602 F.2d 1 (1st Cir. 1979). That case involved a teacher who was denied a salary increment because of unsatisfactory performance. The court's description of the procedural protections in the collective bargaining agreement is strikingly similar to the procedural protections afforded by the Quincy Public Schools:

> The contract in this case accords a teacher significant procedural protections both before and after a determination is made to deny her increment. Evaluations of a teacher's performance are made with the full knowledge of that teacher, and the evaluation report is shown to the teacher who has the right to discuss it with her superiors. A teacher can review the contents of her personnel file, and no derogatory material can be placed in her file unless she has had an opportunity to review and answer such material. Before a teacher can lose her increment her principal must evaluate her and notify her in writing of any deficiencies by December 15. The principal must make another evaluation between December 15 and April 1, and, if the deficiencies still exist must notify the teacher of the recommendation to withhold the increment. The teacher has the right to an evaluation by another principal. Appellant her, and she was given an opportunity to respond to those charges in writing before the school committee acted on her case. After

the determination has been made, the agreement spells out a four level grievance procedure that culminates in arbitration if the teachers' grievance committee presses the appeal.

602 F.2d at 5. (emphasis supplied).

Both contracts provide for teacher review of materials prior to their being placed in a teacher's file, and both contracts allow a teacher to grieve any decision that is thought to be unfair. In *Needleman*, the court held that "the procedures afforded the (teacher) were constitutionally adequate." 601 F.2d at 5. It is important to point out that the procedures, so similar to those in use in the Quincy Public Schools, were adequate even though the teacher lost valued property, a salary increase, to which the contract entitled her.

In his complaint, Mr. Joly states that he seeks a full blown adversary hearing, complete "with attorney and stenographer." The fact that the procedures already established do not provide for an adversary hearing, does not, in and of itself, mean that Mr. Joly was denied due process, for "(t)he very nature of due process negates any concept of inflexible procedures applicable to every imaginable situation." *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). The validity of the procedures used must be measured by the possible harm inflicted and the administrative feasibility of providing a particular procedure. See, e.g., *Matthews v. Eldridge*, 424 U.S. 391, 348 (1976). A more recent formulation of this idea appears in *Ingraham v. Wright*, 430 U.S. 651, 680 (1977): "the question. . . (is) whether the incremental benefit could justify the cost. . ." Since, as Mr. Joly states in the complaint, that "(t)he number of teachers in Quincy, with letters in their files, is very large," (emphasis supplied), the cost and administrative problems involved in providing a full adversary hearing every time a letter was to be placed in a teacher's file would be enormous. Furthermore, the

expected benefits of such a procedure would be minimal.

Both the complexity and minimal benefits of a full adversary hearing in this context can be seen by examining the letter from Mr. Joly's principal and seeing the plethora of issues that a reasonably competent lawyer could raise. At an adversary hearing, some issues might be:

1. The relationship to the "choosing (of) Public enemy # 1" to the "Magic circle technique."

2. The relationship of the "choosing (of) Public enemy # 1" to "Socio - Gram" activity.

3. Whether Plaintiff "violated good pedagogical theory."

4. Whether Plaintiff violated the principle of "humane treatment of little folk."

5. Whether Plaintiff "exhibited poor judgment in honoring the request of the (departing) student."

6. Whether "each ensuing part of the activity" compounded that poor judgment.

The number of questions raised by these issues is enormous. For example: What standards should be used in resolving these issues? Should expert testimony be allowed? Required? Should the letter be included in the file if most of the charges are found to be true? Even cursory consideration of these problems reveals that requiring a full adversary hearing to determine whether the letters should be included in Mr. Joly's personnel file would require an enormous commitment of time, money, and administrative resources. When that expenditure is multiplied by the "very large" number of letters placed in personnel files, it becomes readily apparent that the resources required to process all these claims would not produce a commensurate benefit. The court should not cast such a heavy burden on the already overburdened public schools, and should heed the admonition of *Epperson v. Arkansas*, 393 U.S. 87, 104 (1968): "Judicial interposition in the operation of the public school systems of the nation raises problems requiring care and restraint."

A review of recent cases dealing with this Court's criteria for the required process indicates that the type of hearing and notice required by the Court has rarely approached the level which Mr. Joly seeks. The case of Goss v. Lopez, 419 U.S. 565 (1975) highlights the current Court's refusal to cast a heavy burden on public schools by requiring full adversary hearings whenever an injury is suffered. In Goss, the Court held that due process required that before a student could be suspended from an Ohio public school, he had to be given notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have against him and an opportunity to present his side of the story. 419 U.S. at 581. Yet the Court specifically denied the student's right to have counsel to confront and cross-examine witnesses and to call his own witnesses. 419 at 583. The rationale for this result was that "(t)o impose. . . even truncated trial-type procedures might well overwhelm administrative facilities. . . and cost more than it would save in educational effectiveness." 419 U.S. at 583. These should be the same concerns in the case at hand. The District Court noted that:

> "to require a hearing previous to addition to a Governmental employee's personnel folder or, as in this instance, what was characterized as a letter of reprimand, would. . .subject (public schools) to a considerable burden, which is not warrented in my view." (App. 42).

In addition, these onerous procedural requirements would "apply not simply to school departments but (also) to other governmental agencies." The court should hesitate to subject all governmental agencies to these procedural requirements.

Another enlightening case is Matthews v. Eldridge, 424 U.S. 319 (1976), in which the Supreme Court upheld as constitutionally adequate the procedures of the Social Security Administration in terminating disability benefits.

After the state agency obtained information indicating that the worker was no longer disabled, the agency would inform the individual that it no longer considered him to be disabled and would cite the reasons for its determination. The worker could then submit a written statement with additional documentation to support a conclusion of disability. After the state agency determined that the individual was not disabled, it would notify him of his ineligibility and indicate his right to seek a reconsideration. After the reconsideration decision was made, the individual then had a right to an evidentiary hearing. Except for the submission of written date, prior to the determination of eligibility, procedures to challenge the decision were post-determination.

The Court felt particularly comfortable with the fact that written evidence could be submitted by the disabled worker and medical sources after the first notification of disability ineligibility. The Court contrasted this situation with that in *Goldberg v. Kelly*, 397 U.S. 254 (1970), where the individuals involved were probably not capable of responding adequately in writing and where veracity and credibility were more in issue and only fully capable of being tested within an evidentiary hearing.

Matthews is important because of the similarity in the hearing process to that in the present case. Like *Matthews*, the teacher, here Mr. Joly, is notified of the letter of reprimand and has the opportunity to read it; thus, the teacher is fully aware of the charges. The teacher is encouraged to write a written rebuttal to the letter; both the rebuttal and the letter are included in the file as a permanent record. Surely, there can be no question that this process is adequate when the individual involved is highly educated and responsible for teaching others. At that point, the teacher has three hearings with the third being a full blown, evidentiary hearing before an arbitrator, just as in *Matthews*, the recipient had a number of resources culminating in a hearing. Surely, if these procedures were adequate in *Matthews*, where a disabled worker was denied his income

for a number of months, then the procedures in Quincy, applied in Mr. Joly's case, are adequate where he was deprived of nothing.

In sum, Petitioner's complaint was properly dismissed because even if the Due Process Clause is applicable in this case, the procedures utilized in the Quincy School system have afforded, or could have afforded, Mr. Joly all the process to which he is entitled.

II. CONCLUSION

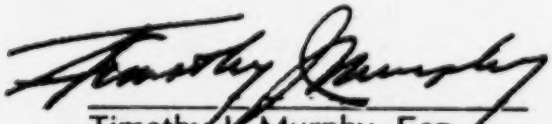
It is clear from the foregoing analysis that the decision rendered by the Court of Appeals fully comports with existing case law at this Court's level, as well as that of the other courts of appeal. Far from presenting any novel or important issue, the Petitioner's questions for review have been repeatedly addressed and answered by this Court in the past twelve years. This Court should utilize its discretion by denying certiorari.

Respectfully submitted,

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Arthur P. Murphy, Esq.
Regina William Tate, Esq.

CERTIFICATE OF SERVICE

This is to certify that I, Timothy J. Murphy, of Murphy, Lamere and Murphy, 250 Granite Street, Braintree, MA 02184 did serve a copy of the foregoing Respondent's Brief in Opposition To Granting Certiorari To The United States Court Of Appeals For The First Circuit by miling postage prepaid this date, November 13, 1980, to Thomas P. Kramer, Esq., at the law offices of Thomas P. Kramer and Francis X Tansey, 1020 Plain Street, Marshfield, MA 02050.



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